

**CITY OF BRAZIL, INDIANA
ORDINANCE NO. 20-2006**

AN ORDINANCE AMENDING SECTIONS §§93.01, 93.02, 93.03, 93.04 AND 93.99 OF CHAPTER 93, TITLE IX OF THE CITY OF BRAZIL, INDIANA CODE OF ORDINANCES CONCERNING PUBLIC NUISANCES UNDER CHAPTER 93 OF TITLE IX OF THE BRAZIL CODE OF ORDINANCES AND THE PENALTIES THEREFORE.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BRAZIL, INDIANA:

**SECTION ONE
AMENDING SECTION §93.01**

The Definitions in Section §93.01 of Chapter 93, Title IX of the City of Brazil, Indiana Code of Ordinances be and hereby is amended to read as follows:

§93.01 DEFINITIONS

For purposes of this sub-chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(A) “GARBAGE”

All organic household waste, offal, animal and vegetable matter prepared or intended use of food, condemned foodstuffs and materials, and substance, materials, and things ordinarily disposed of in containers and incinerators by hotels, restaurants, stores, hospitals, apartment houses, and private dwellings.

(B) “LOT” OR “PARCEL OF REAL ESTATE”

Includes, in addition to those grounds within their respective boundaries, all of the grounds lying to the center of the street or alley where the street or alley is not improved.

**(C) “WEEDS, UNCUT GRASS, AND OTHER UNSIGHTLY
VEGETATION”**

Any weeds or uncut grass of more than eight (8) inches in height or any bush, brush, or shrub, which has not been planted, but comes forth naturally or is in an untrimmed or un-maintained condition, which is harmful to the general public health and welfare or detracts from the appearance and sanitary safety of the neighborhood.

(D) “TRASH AND OTHER RANK ELEMENTS”

Any and all rubbish, junk, debris, and refuse including, but not limited to, glass bottles and containers, broken glass, aluminum cans, paper products, plastic products, rubber products, metals, rags, weed clippings, grass clippings, tree toppings or leaves, which is harmful to the general public health and welfare or detracts from the appearance and sanitary safety of the neighborhood.

SECTION TWO
AMENDING SECTIONS §§93.02, 93.03, AND 93.04

Section §§93.02, 93.03, 93.04 of Chapter 93, Title IX of the City of Brazil, Indiana Code of Ordinances be and hereby are amended to read as follows:

§§93.02 VIOLATIONS

- (A) It shall be unlawful for any owner, occupant, or lessee of any lot within the corporate limits of the City to allow, suffer, or permit any “garbage” as defined in §93.01 (A); “weeds, uncut grass or other unsightly vegetation” as defined in §93.01 (C); or any “trash or rank elements” as defined in §93.01(D), to be deposited on, grow on, or remain on any such lot.
- (B) Whenever and wherever any “garbage” as defined in §93.01 (A); “weeds, uncut grass and other unsightly vegetation” as defined in §93.01(C); or, any “trash or other rank elements” as defined in §93.01 (D), that is deposited on, grows on, or remains on any such lot within the corporate limits of the City, the same shall be a nuisance and a violation of this chapter.

§93.03 INSPECTION; NOTICE

A)(1) It shall be the duty of any city department, and specifically the duly appointed Planning and Zoning Administrator, to inspect from time to time the various lots lying within the corporate limits of the City, and if it is found that “garbage” as defined in §93.01(A); “weeds, uncut grass and other unsightly vegetation” as defined in §93.01(C); or, any “trash or other rank elements” as defined in §93.01(D), that is deposited on, grows on, or remains on any such lot, it shall be the duty of said city official to report the same to the duly appointed Planning and Zoning Administrator for the City of Brazil, Indiana. The said duly appointed Planning and Zoning Administrator shall verify the condition of the lot in question that has been reported, upon such verification and concurrence in regard to a potential violation of city ordinance, shall ascertain the names of the owners, occupants, or lessees of said city lot.

(2) Said Planning and Zoning Administrator shall then notify the owners, occupants, or lessees, in writing, that said lot is in violation of Chapter 93, Title IX of the City of Brazil Code of Ordinances in regard to “garbage”; “weeds, uncut grass and other unsightly vegetation”; or “trash and other rank elements.” Said written notice shall be specific in regard to the condition alleged to be in violation of Chapter 93. Said notice shall also inform the owner, occupant or lessee that the condition of the lot is to be remedied within seven (7) days from the date of notice. Notice shall be personally served on the owner of record **or** shall be sent to the owner of record as the name and address appears on the records of the Clay County Auditor, by certified mail, regular mail, and a copy placed on the lot or parcel in question. When personal service is obtained, that shall constitute date of notice. When service is by certified mail, regular mail, and placing notice on the lot or parcel at issue, these notice procedures shall be done on the same day which is then deemed the date of notice.

B) Consistent with the duty of owners, occupants and lessees of lots or parcels of real estate located within the corporate boundaries of the City of Brazil, Indiana, to keep same free of public nuisances, the City Planning and Zoning Administrator, may utilize the inspection; notice provisions of this sub-section for “continuing violations and continued failure to abate.”

In regard to the first violation of Chapter 93.01 through 93.04 of Title IX of the City of Brazil Code of Ordinances, for any specific “lot” or “parcel of real estate” in a given calendar year, the inspection and notice procedures shall be as outlined above in §93.03 A (1) (2). In regard to this first alleged violation occurring in any given calendar year, where the owner, occupant or lessee fails to abate the nuisance and said nuisance is abated by the City of Brazil, Indiana, any subsequent inspection and notice of violation in said calendar year, shall be deemed a “continuing violation and continued failure to abate.” In that event, the inspection/notice provisions of §93.03 A (1) and (2), shall be followed by the Planning and Zoning Administrator for the City of Brazil, Indiana; however, the notice outlined in §93.03 A (2) shall additionally state that unless the specified public nuisance is abated by the owner, occupant or lessee of the “lot” or “parcel of real estate” within the corporate boundaries of the City of Brazil, Indiana within the required time, or unless a hearing is requested pursuant to §93.04 (B), then the City of Brazil, Indiana, shall take the abatement action contemplated in §93.04, and shall continue to abate public nuisances in regard to “lots” or “parcels of real estate” subject to this sub-section once each month for the remainder of said calendar year without further notice, if not otherwise abated by the owner, occupant or lessee.

The Planning and Zoning Administrator for the City of Brazil, will prepare a list of properties subject to this sub-section and present said list at the monthly meeting of the Board of Public Works and Safety for their approval of continuing abatement and continued failure to abate by owner, occupant or lessee.

§93.04 FAILURE TO ABATE

- A) Any owner, occupant, or lessee of the lot who shall fail to remove or abate such ordinance violation involving “garbage” as defined in §93.01(A); “weeds, uncut grass or other unsightly vegetation” as defined in §93.01(C); or any “trash or rank elements” as defined in §93.01(D), to be deposited on, grow on, or remain on any such lot, after receiving notice as provided in §93.03, shall be subject to the duty of the Board of Public Works and Safety to cause the same to be removed or otherwise abated.

- B) Any owner, occupant, or lessee of any lot alleged to be in violation of the city nuisance ordinance, i.e. §§93.01, 93.02, 93.03 and 93.04 of Chapter 93, Title IX of the City of Brazil, Indiana Code of Ordinances, shall have the right to contest the alleged ordinance violation by notifying the City Planning and Zoning Administrator, who shall so inform the Board of Public Works and Safety of said person's request to be heard. If a hearing is requested, the Board of Public Works and Safety shall then have a hearing on the alleged violation to determine whether or not an ordinance violation has incurred prior to taking action to remove or rebate.
- C) When the Board of Public Works and Safety has effected the removal or abatement of the nuisance, the Board of Public Works and Safety shall prepare a sworn statement showing the cost of the work performed and they shall bill the owner of record. Such bill shall be due and payable at the time of receiving the statement. The minimum amount shall be \$25.00.
- D) When the full amount due the City is not paid by the owner within 30 days after work has been performed, as provided in subsection (C) above, then, and in that case, the Board of Public Works and Safety shall certify the total cost to remove and abate, including postage and/or publication costs to the County Auditor. This certification shall be in the form of a sworn statement, showing the total cost and expense incurred, including the expense of notice and/or publication, the expense of the work done including the date of completion and the location of the property upon which the work was done for removal or abatement. This sworn statement shall be signed by the duly elected Mayor of the City of Brazil as Mayor and as a member of the Brazil, Indiana Board of Public Works and Safety. The Auditor shall place the total amount certified, on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the General Fund of the City of Brazil, Indiana in administering this chapter. At the City's discretion, such certification and sworn statement may also be provided to the Recorder of Clay County, Indiana, which said sworn statement shall constitute a lien and privilege on the property and shall remain in full force and effect for the amount due on principal and interest, plus cost, if any, for

collection, until payment has been made, at which time a release of the lien shall be recorded.

The costs and expenses shall be collected in the manner fixed by law for the collection of real estate taxes and further shall be subject to a delinquent penalty the same as real estate taxes in the event same is not paid in full on or before the date the tax bill on which said charges appears become delinquent. Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned that the property designated or described in the statement and that the same is due and collectible as provided by law.

§93.99 PENALTY

A. If a citation is issued, whoever violates any provision of §§93.02 through 93.04, shall be subject to a civil penalty of \$100.00. The procedure set forth in §93.04 is not a condition precedent to violation and enforcement of this Chapter. If a citation is issued, whoever violates any provision of §94.05, shall be subject to a civil penalty of \$25.00.

B. If a citation is issued, whoever violates any provision of §§93.10 through 93.13, shall be subject to a civil penalty of \$100.00.

C. If a citation is issued, whoever violates any provision of §§93.14 through 93.19; 93.45; 93.46; 93.49; or, 93.51, shall be subject to a civil penalty of \$100.00.

D. Whoever violates any provision of §§93.25 through 93.29, shall be subject to a civil penalty of \$100.00. Any action brought by the City of Brazil for the violation of §§93.25 through 93.29, shall be commenced within sixty (60) days from the date of the offense.

E. If a citation is issued, whoever violates any provision of §93.30, shall be subject to civil penalty of \$100.00.

F. If a citation is issued, whoever violates any provision of §§93.47 through 93.50, shall be subject to a civil penalty of \$50.00.

G. If a citation is issued, whoever violates any provision of §§93.60 through 93.63, shall be subject to a civil penalty of \$100.00.

H. If a citation is issued, whoever violates any provision of §§93.70 through 93.77, shall be subject to a civil penalty of \$50.00.

I. If a citation is issued, whoever violates any provision of §§93.78 through 93.80, shall be subject to a civil penalty of \$50.00.

J. For violations of this Chapter, a separate offense shall be deemed committed each day that a violation occurs or continues.

K. If a citation is issued, whoever violates any provision of this Chapter for which no specific penalty is prescribed, shall be subject to §10.99.

SECTION THREE
IN ALL OTHER RESPECTS, SECTIONS REMAIN THE SAME

In all other respects, the provisions of Chapter 93 of Title IX of the City of Brazil, Indiana Code of Ordinances shall remain in full force and effect.

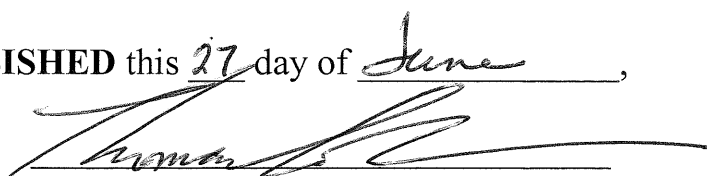
SECTION FOUR
TIME OF EFFECT

This Ordinance shall be in full force and effect from and after its passage, signed by the Mayor, and publication as required by law.

SECTION FIVE
REPEAL OF CONFLICTING ORDINANCES

All ordinances, or any parts thereof, which are in conflict with the provisions of this Ordinance are hereby specifically repealed.

ORDAINED AND ESTABLISHED this 27 day of June,
2006.



Thomas Arthur
Mayor, City of Brazil, Indiana

ATTEST:

Marcy Webster
Clerk-Treasurer of the City of Brazil, Indiana

MEMBERS OF THE COMMON COUNCIL

AYES:

Martin S. Beasley
Martin Beasley

A. Ann Bradshaw
A. Ann Bradshaw

Patricia Heffner
Patricia Heffner

William Lovett
William Lovett

James Sheese
James Sheese

NAYS:

Martin Beasley
Martin Beasley

A. Ann Bradshaw
A. Ann Bradshaw

Patricia Heffner
Patricia Heffner

William Lovett
William Lovett

James Sheese
James Sheese

Presented by me to the Mayor of the City of Brazil, Indiana for his approval and signature on this 28 day of June, 2006.

Marcy Webster
Tracy Webster, Clerk-Treasurer of the
City of Brazil, Indiana

Approved and signed by me on the 28 day of June, 2006, at
the hour of 8:49 o'clock A.m.

Thomas Arthur
Thomas Arthur, Mayor of the
City of Brazil, Indiana